

under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of §1003.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the grantee must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(1) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property,

excluding any short-term, temporary use.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under §1003.205 and §1003.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under §1003.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under §1003.208 shall be counted for this purpose in their entirety.

Subpart D—Single Purpose Grant Application and Selection Process

§ 1003.300 Application requirements.

(a) *Application information.* A Notice of Funding Availability (NOFA) shall be published in the FEDERAL REGISTER

not less than 30 days before the deadline for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be used, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Costs incurred by an applicant prior to the submission of the single purpose grant application to HUD will not be recognized by HUD as eligible ICDBG expenses.

(c) HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Area ONAP may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such written authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(Approved by the Office of Management and Budget under control number 2577-0191)

§ 1003.301 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests listed in the NOFA to be rated and ranked, Area ONAPs must determine that the following requirements have been met:

(1) *Community development appropriateness.* (i) The project costs are reasonable;

(ii) The project is appropriate for the intended use; and

(iii) The project is usable or achievable (generally within a two-year period).

If in the judgment of the Area ONAP, available data indicate that the proposed project does not meet these requirements, the Area ONAP shall re-

ject the project from further consideration.

(2) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed program. If the Area ONAP determines that the applicant does not have or cannot obtain the capacity to undertake the proposed program, the application will be rejected from further consideration.

(3) *Performance.*—(i) *Community development.* Performance determinations are made through the Area ONAP's assessment process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(ii) *Housing assistance.* The applicant must not have been found taking actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the tribe or village. If inadequate performance is found, and the applicant has been notified in writing, they may be rejected from further consideration. Performance determinations are made through the Area ONAP's assessment process.

(iii) *Audits.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The Area ONAP administrator may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.